D.B. CIVIL SPECIAL APPEAL (W) NO.517/2006
(UIT, Bikaner Vs. Swami Sanwit Somgiri & Ors.)

Date of order : 6.10.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. R.L. Jangid, for the appellant.

This appeal is directed against the order of learned Single Judge dated 15.9.2005 rejecting an application for recalling judgment dated 27.10.1998 passed in Civil Writ Petition No.1873/1998.

Having heard learned counsel for the appellant we are of the opinion that this appeal has no merit.

The writ petition filed by the respondent was disposed of by learned Single Judge vide order dated 27.10.1998 in the following terms :

> "Heard Mr. B.L. Purohit, learned counsel for the petitioner and Mr.S.L. Jain for respondent No.2 U.I.T.
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> The grievance of the petitioner is that khasra No.583 forms the part of the land which belongs to deity of which petitioner is guardian/ caretaker. The land in dispute has never been acquired, and, therefore, respondent No.2 should not dispose of the property or use it by any means.
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> Mr. S.L. Jain, learned counsel for Respondent No.2 U.I.T. Bikaner has

> fairly conceded that some land had been acquired vide Notification dated 22nd of August 1974, but it did not include the Khasra No.583. Therefore, in view of the statement made by Shri Jain it is clear that Respondents are by no means competent to occupy, use or transfer the said land, shall not transfer or interfere with the area bearing khasra No.583. The U.I.T. Is certainly competent to develop land other than Khasra No.583 which had been acquired for it and use it in any manner, in view of the judgment of this Court in Temple Thakurji vs State of Rajasthan & Others A.I.R. 1998 Raj. 85 and Division Bench Judgment in Mangilal vs State 1997 R.L.W. 2017, the deity being perpetual minor and permanent disable person deserves a special treatment and his interest has to be protected by the State, Executive and Revenue Authoritiesand Courts, therefore, inview of said judgments it is desirable that the District Collector of Bikaner be directed to look into the matter and must make efforts to restore the possession of the land to the said deity.
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> With these observations the petition is dispose of finally."

The respondent-petitioner has claimed that land of Khasra No. 583 was the temple land of Laleshwar Mahadev Mandir admeasuring 565 bighas and 17 biswas in Bikaner and was recorded in the name of Mahant of that temple. On 23.5.1998, the petitioner moved an application before the Secretary, UIT that Khasra No.583 which ad measures 81.07 hectares and which is part of temple Laleshwar Mahadev Mandir, Shiv Badi, Bikaner was granted by erstwhile Bikaner State to Temple and has been so recorded in land records. That land has not been acquired by UIT but part of the

same has been put to auction for which the UIT is not entitled to. He, therefore, requested for recalling of the auction notice. This letter was placed on record as Annexure-3. The respondent – UIT in its reply while made averment that the petitioner has not placed documents of its interest in the land on record has specifically pleaded that the answering respondent has not touched any other land except the land for which compensation has already been paid. It was further stated that the land was acquired after payment of compensation and mutation of that land was made in favour of the answering respondent.

In para-18 of their reply, the fact that the mutation of land in question stood in the name of Mahant was also admitted in the writ petition when it was stated that "it appears that relevant facts were not brought to the notice of Sub-Divisional Officer who recorded mutation in the name of Mahant."

It was also stated in para 7 of the reply that "mutation in the name of the petitioner was wrongly recorded as submitted above the petitioner himself has admitted that the land was allotted to Mandir Shri Laleshwar Mahadeo, then mutation should be in the name of Temple and not in the name of Mehant."

Therefore, from the pleadings, it appears that except that the mutation ought to be in the name

of the temple and not in the name of Mehant, no issue was joined about the ownership of land except to the extra land which was part of acquisition proceedings, albeit correctness of the mutation was questioned. The answering respondents were assertive in their submissions that they were dealing with the subject matter of the acquired land only.

It was in the aforesaid circumstances before the learned Single Judge when statement was made that the land forming part of Khasra No. 583 was not subject matter of the acquisition proceedings at all, the order was passed by the learned Single Judge, restraining the respondent – UIT from interfering with the land of Khasra No. 583 and directed to restore the possession to the petitioner.

Aggrieved with the aforesaid order, UIT- preferred an application for recalling of the order of the learned Single Judge dated 27.10.1998. No contention was made about correctness of statement made by counsel for UIT, nor it is the case even now that land in question was not the subject of acquisition proceedings and that in the land records at the relevant time the land was entered in the name of petitioner.

The contention on which primarily the recalling application of the order dated 27.10.1998

was founded is that the acquisition proceedings were not necessary inasmuch as the petitioner had no vested interest in the land in question but the land was vested in the State.

However, the learned Single Judge while considering pleadings found that this was not the stand taken by the respondent UIT that it had taken possession of any part of the government land which was other than land acquired for the purpose. Therefore this enquiry was beyond the scope of the acquisition. In view of the aforesaid state of affairs, the learned Single Judge vide order dated 15.9.2005 rejected the application of recalling of the order dated 27.10.1998. Hence, this appeal.

The same contention has been raised before us by the learned counsel for the appellant.

We are of the opinion that in the state of affairs of the pleadings when the fact that at the time of filing of the writ petition mutation of the land was in favour of Mehant was not disputed but its correctness was disputed by the answering respondents not because of title of State but on the ground that it ought to be in the name of temple and admittedly the land was not subject matter of the acquisition with assertive submission made by the learned counsel for UIT, no further issue fell to be decided by the

learned Single Judge while making order dated 27.10.1998 and no exception can be taken to the order passed by learned Single Judge in making the order under appeal, rejecting the application for recalling of order dated 27.10.1998.

Learned counsel for the appellant sought to urge grounds about the persons settled on the land in question at the instance of the applicant and the establishment of the colony and tried to re-assert that the land belongs to the government originally. We are of the opinion that this contention is beyond the scope of the present controversy. No reply had been submitted by State asserting its title on the land nor UIT in its return had asserted any title in any land other than the one which was subject matter of acquisition proceedings. Notifications in respect of which were placed on record. The State Government was party to the writ petition. Nothing has been brought to our notice that the State Government has preferred a line of defence independent of the acquisition proceedings pleaded by UIT. In this state of affairs, we are of the opinion that the review application cannot be permitted to be used for raising new controversy other than which was subject matter of original proceedings. So far as the persons who have settled, they are not before us claiming better title than the petitioner. The derivative title holder cannot have a better title than the

person from whom such title is derived. The UIT – the sole applicant has failed to show any such title existed in it to deal with the land in question.

Accordingly, the appeal fails and is hereby dismissed.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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